

HOUSE BILL 2953  
By Stanley

AN ACT to amend Tennessee Code Annotated, Title 16,  
Chapter 4, Part 1, relative to appellate review.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 16, Chapter 4, Part 1, is amended by adding the following as a new section thereto:

§16-4-116.

(a) Each three-judge panel of the court of appeals sitting to decide an appeal shall consist of one judge from the western section, one judge from the middle section and one judge from the eastern section, with each judge being randomly selected by chance.

(b) Oral argument of appeals, if not waived by all appellants and all appellees, shall be conducted by telephonic conference, unless all of the members of the three-judge panel concur in a decision to conduct in-person oral arguments in a particular appeal; provided, the oral argument shall be tape-recorded and, thereafter, transcribed by a court reporter, at the expense of the appellants and appellees, equally divided, and filed by the clerk as part of the public record in the appeal.

(c) No member of a three-judge panel, directly or indirectly, shall consult, confer or collaborate in any way with or discuss the merits of the appeal with any other member of the panel or any other judge on the court of appeals until after each member, independently and separately from the other members, has written the opinion and judgment that that judge would write if that judge, exclusively, was deciding the appeal.

(d) Unless extraordinary or exigent circumstances prohibit same, each member of a three-judge panel shall have completed the member's opinion and judgment within

sixty-five (65) days after the appeal is submitted for a decision; provided, if a member is unable to complete the member's opinion and judgment within sixty-five (65) days, the member, on or before the sixty-fifth (65<sup>th</sup>) day, shall file a written notice on the public record in the appeal, including a written explanation of what extraordinary or exigent circumstance prohibits timely completion of the member's opinion and judgment and stating a date by which the opinion and judgment will be completed.

(e) Per curiam opinions and judgments by all appellate courts in Tennessee, hereby, are prohibited.

(f) Each member of a three-judge panel selected to hear and decide an appeal only after all of the members of the three-judge panel have completed the members' opinions and judgments, shall distribute the member's separate and independently authored opinion and judgment, simultaneously, to each appellant and each appellee and each of the other members of the three-judge panel.

(g) Each member's separate and independently authored opinion and judgment shall be filed as a part of the appellate record and shall include:

(1) A recitation of the facts of record, in a form that would be compliant with *Tennessee Rules of Civil Procedure*, Rule 52.01, if in a trial court, stating, by reference to volume and page number, the place in the record on appeal on which each fact recited is based and the legal significance the member attributes to each fact and, in addition to a statement of facts, a statement of conclusions of law in a form compliant with *Tennessee Rules of Civil Procedure*, Rule 52.01, if in a trial court;

(2) A restatement of each issue, as stated by each appellant and each appellee, with the member's opinion as to why the appellant's or appellee's conception of the issue and the authorities cited in support of the appellant's or

appellee's position with respect to the issue is or is not in accord with rule of law; provided, the member's opinion concerning each issue stated by each appellant and each appellee shall be thoroughly supported by citation to precedent and/or, if any, other authorities, including an explanation as to the reasoning by which the member reconciles apparently inconsistent authorities, if any;

(3) The opinion of the member, thoroughly supported by citation to precedent and/or other, if any, authorities the member considers to be controlling disposition of the appeal, as well as the member's explanation of the logic and reasoning supporting the member's conclusion that precedent and/or, if any, other authorities cited by appellants and appellees, to support a contrary disposition, are not controlling;

(4) A statement by the member that the disposition the member would make of the appeal is the disposition the member perceives to be required by rule of law totally unaffected by the member's personal feelings about whether the disposition required by rule of law is a just or unjust disposition or otherwise consistent with the member's personal opinion that a different disposition ought to have been the disposition; and

(5) At the option of the member, a statement, of no legal significance, as to the personal opinion of the member concerning whether the disposition the member perceives to be required by rule of law is a disposition consistent with the member's personal sense of oughtness.

(h) Within fifteen (15) days after each member's separate and independently authored opinion and judgment is distributed, as required by subsection (f) above, each appellant, each appellee and each of the other members of the three-judge panel may file, as part of the public record in the appeal, written critiques, consisting of no more

words than the opinion and judgment being critiqued, of each of the members' separate and independently authored opinion and judgment, and a separate written assessment, no more than five hundred (500) words in length, as to what, if any, consensus there is between and among the members' separate and independently authored opinions and judgments that can be restated as a judgment of the court of appeals disposing of the appeal.

(i) Within fifteen (15) days after the day beyond which critiques no longer may be filed, the members of the three-judge panel, for the first time, shall consult, confer, collaborate and otherwise discuss the merits of the appeal in light of the separate and independently authored opinions and judgments, and render the court of appeals' judgment on the appeal; provided, the judgment of the court of appeals so rendered shall include nothing less or more or other than those opinions and judgments stated in the separate and independent opinions and judgments as to which two or more members of the three-judge panel are in agreement.

(j) To the extent that a judgment of the court of appeals, rendered in accordance with subsection (i) above, fails to rule on an issue materially and substantively affecting the rights of an appellant or an appellee, as to such issues, such appellants and/or appellees shall have a right to a rehearing of the appeal by all members of the court of appeals other than the members of the three-judge panel who issued the judgment of the court of appeals.

(k) The rehearing, in accordance with subdivision (j) above, shall be initiated by a petition to rehear, without further briefing or oral argument, and otherwise decided based on nothing other or more than the record in the court of appeals.

(l) The petition to rehear will be decided by each member of the court of appeals, in accordance with subsection (j) above, on the issues submitted for rehearing only,

issuing within twenty (20) days after the petition to rehear is filed, a written opinion and judgment, in form like the separate and independently authored opinions and judgments filed by the members of the three-judge panel.

(m) Within five (5) days after the last separate and independently authored opinions and judgments on the petition to rehear has been filed, the judgment of the court of appeals shall be amended by the three-judge panel issuing the judgment originally, so that the amended judgment includes a disposition on the issues reheard, said disposition being that on which a majority of the members, in the members of the three-judge panel, of the court of appeals concur; provided, as to any issue/s where a majority of the members of neither the three-judge panel of, as to issues reheard, a majority of the members of the court of appeals concur, the court of appeals shall issue a plurality opinion and judgment.

(n) Appeals to the supreme court from a plurality opinion and judgment of the court of appeals shall be governed by *Tennessee Rules of Appellate Procedure*, Rule 3, so that the discretion the supreme court has under *Tennessee Rules of Appellate Procedure*, Rule 11 shall not apply to such appeals.

(o) In accordance with the Constitution of Tennessee and the expectations of the general assembly and the citizens of Tennessee, the supreme court, unlike any other court in Tennessee, is the court on which the general assembly and the citizens of Tennessee depend to assure that other courts in Tennessee do not err by any ruling that deviates from rule of law; therefore, the supreme court shall operate in such a way to reassure that the expectations of the general assembly and the citizens of Tennessee are converted into reality in fact.

(p) The supreme court, by denying an application to appeal, filed pursuant to Tennessee Rules of Appellate Procedure, Rule 11, on the ground or because the

supreme court conceives itself not to be an error-correcting court but law-making court, shall never permit to go unreversed a ruling by the court of appeals or by a trial court that deviates from rule of law; provided, the supreme court may grant an application to appeal, exercise the supreme court's supervisory jurisdiction, and without filing an opinion reverse, and remand to the court of appeals for correction of the error and an amendment of the court of appeals' judgment in the accord with the supreme court's reversal.

(q) The decision-making procedure of the supreme court shall conform to that mandated for the court of appeals; provided, in each appeal to the supreme court, all of the justices shall vote whether to hear the appeal by a three-judge panel of supreme court justices or by all of the five justices sitting together.

(r) If a decision in an appeal is published in the national reporter system, all of the separate and independently conceived and authorized opinions and judgments shall be published along with the judgment.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.